

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 28, 2001

CALVIN LEE SNEED v. STATE OF TENNESSEE

Appeal from the Circuit Court for Rhea County
No. 13385 J. Curtis Smith, Judge

No. E2000-01604-CCA-R3-PC
May 8, 2002

The petitioner, Calvin Lee Sneed, appeals the Rhea County Circuit Court's dismissal of his petition for post-conviction relief from a 1995 conviction for first degree premeditated murder. The trial court concluded that the petition failed to state a colorable claim. See Tenn. Code Ann. § 40-30-206(f). The petitioner contends that his petition states colorable claims and that the trial court erred in dismissing the petition without the appointment of counsel or an evidentiary hearing. We agree and remand the case to the trial court for the appointment of counsel.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Reversed and Remanded

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ALAN E. GLENN, JJ., joined.

Calvin Lee Sneed, Wartburg, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Thomas E. Williams, III, Assistant Attorney General; James Michael Taylor, District Attorney General, for the appellee, State of Tennessee.

OPINION

On September 22, 1995, a Rhea County Circuit Court jury convicted the petitioner of first degree premeditated murder, and the trial court sentenced him to life imprisonment. This court upheld the conviction on direct appeal. See State v. Calvin Lee Sneed, No. 03C01-9611-CR-00444, Rhea County (Tenn. Crim. App. June 12, 1998), app. denied (Tenn. Feb. 16, 1999).

The petitioner filed a pro se petition for post-conviction relief, alleging that (1) he was denied the right to an impartial tribunal during his direct appeal; (2) the trial court gave improper jury instructions regarding reasonable doubt and first degree murder; (3) he received the ineffective assistance of trial and appellate counsel; and (4) the cumulative effect of these errors deprived him of the right to due process of law. The trial court did not appoint an attorney or hold an evidentiary

hearing and dismissed the petition for failure to state a colorable claim. In this appeal, the petitioner contends that his petition states colorable claims and that the trial court dismissed his petition prematurely. The state argues that the trial court correctly dismissed the petition.

In considering whether a post-conviction petition states a colorable claim for relief, the trial court is to take the facts alleged as true. See Tenn. Code Ann. § 40-30-206(f). “A colorable claim is a claim . . . that, if taken as true, in the light most favorable to the petitioner, would entitle petitioner to relief under the Post-Conviction Procedure Act.” Tenn. Sup. Ct. R. 28, § 2(H). The petition must disclose the factual basis for any grounds for relief and a “bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings.” Tenn. Code Ann. § 40-30-206(d).

We believe that the petitioner’s post-conviction petition states colorable claims for relief. For example, the petitioner raises an ineffective assistance of counsel issue and lists several bases for the claim. Although the trial court determined that the petitioner was attempting to disguise issues that he had raised on direct appeal as ineffective assistance of counsel, our supreme court has recently stated that “the constitutional right to effective assistance of counsel under the United States and Tennessee Constitutions is a cognizable issue in post-conviction proceedings irrespective of whether counsel’s alleged deficiency implicated a separate constitutional error, a statutory error, a jury instructional error, or any other type of error or deficient performance.” Dean v. State, 59 S.W.3d 663, 667 (Tenn. 2001). Thus, at the very least, the petition states a colorable claim for relief as to the ineffective assistance of counsel issue, and the petitioner is entitled to have counsel appointed and to proceed with his claim.

Based upon the foregoing and the record as a whole, we reverse the trial court’s dismissal of the petition and remand the case to the trial court for appointment of counsel.

JOSEPH M. TIPTON, JUDGE